Supreme Court, U.S.
FILED

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 2002

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TYRESE WILLIAMS,
Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

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Petition for Writ of Certiorari to the
Illinois Appellate Court, First District

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# PETITION FOR WRIT OF CERTIORARI

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17 pp

## QUESTION PRESENTED

PETITIONER'S RIGHT TO HAVE DNA ANALYSIS CONDUCTED ON A PARTIALLY-SMOKED CIGAR, IS PROTECTED BY DUE PROCESS, WHERE THE RESULTS OF SAID TESTING COULD TEND TO CORROBORATE PETITIONER'S TRIAL TESTIMONY AND DEFENSE.

UNDER THESE CIRCUMSTANCES DOES THE STATE HAVE ANY RIGHT TO PROHIBIT PETITIONER FROM HAVING DNA ANALYSIS PERFORMED, AND WAS PETITIONER DENIED DUE PROCESS BY THE ILLINOIS COURTS' ABUSE OF DISCRETION IN PROHIBITING SUCH DNA TESTING?

## PARTIES INVOLVED

In the appeal proceedings from the judgment entered in the Circuit Court of Cook County, Illinois:

Petitioner, Tyrese Williams, was the Appellant in the Appellate Court of Illinois, First District.

Respondent, People of the State of Illinois, was the Appellee in the Appellate Court of Illinois, First District.

* * *

Petitioner Tyrese Williams was the petitioner in the Petition For Leave To Appeal, denied by the Illinois Supreme Court.

Respondent, People of the State of Illinois, was the respondent in the Petition For Leave To Appeal, denied by the Illinois Supreme Court.

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PETITION FOR A WRIT OF CERTIORARI
TO THE APPELLATE COURT OF ILLINOIS,
FIRST DISTRICT

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Petitioner, Tyrese Williams, prays that a writ of certiorari issue:

to the Appellate Court of Illinois, First District, to review its Order denying petitioner the right to conduct DNA testing on certain physical evidence.

## Orders Below

The following Orders are all contained in the Separate Volume Appendix to this Petition:

The unpublished Order of the Illinois Appellate Court, First District, People v. Williams, No. 1-00-0570, April 15, 2002, affirming petitioner's conviction and sentence, and denying petitioner the right to conduct DNA testing on certain physical evidence, is set out at Appendix C, pp. App. 3-19.

The unpublished Order of the Illinois Appellate Court, First District, People v. Williams, No. 1-00-0570, entered June 10, 2002, denying petitioner's Petition for Rehearing, is set out at Appendix B, p. App. 2.

The unpublished Order of the Illinois Supreme Court, People v. Williams, No. 94136, entered October

2, 2002, denying petitioner's Petition For Leave to Appeal, is set out at Appendix A, p. App. 1.

## Jurisdictional Statement

The Order sought to be reviewed was entered by the Appellate Court of Illinois, First District, on April 15, 2002. (App. C, p. App. 3) The Appellate Court of Illinois, First District, denied the Petition For Rehearing on June 10, 2002. (App. B, p. App. 2) The Illinois Supreme Court denied leave to appeal on October 2, 2002. (Appendix A, p. App. 1)

Jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

## Constitutional Provision Involved

The federal constitutional provision involved is the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

## STATEMENT OF THE CASE

### Statement of Facts

Petitioner (then, defendant) was convicted in a bench trial of possession of controlled substance with

intent to deliver (400 grams or more but less than 900 grams of a substance containing cocaine) and sentenced to 12 years in prison. (C 68)

At the trial, two Harvey Police Officers testified that petitioner was a passenger in a car stopped for traffic offenses. (R 12-13, 31, 62-63, 70-79) Sherone Watkins, the driver, was taken into custody for having a suspended license. (R 63, 74-75)

The police officers testified they observed a small bag of cannabis sticking out of petitioner's pants pocket, so they seized the bag and arrested petitioner. (R 15-16, 33-39, 41-48) The police then searched petitioner, and claimed to have found several bags containing about 500 grams of cocaine, in the front of petitioner's pants. (R 17-27, 48-49. 86-91)

Petitioner testified that the police found a bag in the car which contained cigar paper and leaves. (R 107-08) Petitioner had no cocaine on his person, and he never saw any cocaine. (R 108-10) At the police station, the police displayed a grocery bag, and said, "Look what we found" in the squad car, under the seat. (R 112)

After being found guilty, petitioner filed post-trial motions via new counsel, including a motion to produce the cannabis allegedly seized from petitioner, because the laboratory reports note a partially-smoked cigar being in the bag, a detail never mentioned by the

police. (R 19, 158)

Over the State's objection, the bag of cannabis with the cigar inside was produced for examination, after which the trial court denied petitioner's motion for DNA testing on this cigar. (R 182-89)

On direct appeal petitioner raised several issues, including the alternative argument that if petitioner's conviction was not reversed, then petitioner should be permitted to have DNA analysis conducted on the cigar found in the bag of cannabis. (Petitioner's Appellate Brief, Point 6; Petition For Leave To Appeal, Point 1.)

The Appellate Court of Illinois, First District, denied petitioner the right to conduct DNA testing of the cigar found in the bag of cannabis, stating:

> "Here, defendant has failed to establish the significance of scientific testing of the cigar with regard to his claim of actual innocence. Defendant's identity was not at issue . . . . [T]he trial court properly denied defendant's motion because scientific testing of the cigar would not have produced any relevant information as to defendant's guilt or innocence." (Appendix C, pp. App. 18-19)

Petitions for rehearing and leave to appeal were subsequently denied. (App. A, B; pp. App. 1, 2)

Petitioner prays that a writ of certiorari issue to review the Order denying petitioner the right to conduct DNA testing on the cigar found in the bag of cannabis.

## RAISING THE FEDERAL QUESTION

The federal question relative to DNA analysis was raised by petitioner in the trial court, the Illinois Appellate Court, and Illinois Supreme Court.

Petitioner's post-trial motion for DNA analysis was couched and argued in federal due process terms. (R 162-69; 172-89; C 59)

In the Appellate Court of Illinois, First District, petitioner raised the issue of DNA analysis at Point 6 of petitioner's Brief. Federal due process was argued in said Point, with federal cases cited in support thereof.

In the Supreme Court of Illinois, petitioner raised the issue of DNA analysis at Point 1 of petitioner's Petition For Leave To Appeal. Federal due process was argued in said Point, with federal cases cited in support thereof.

## REASONS FOR GRANTING CERTIORARI

PETITIONER'S RIGHT TO HAVE DNA TESTING CONDUCTED ON A PARTIALLY-SMOKED CIGAR, IS PROTECTED BY DUE PROCESS, WHERE THE RESULTS OF SAID TESTING COULD TEND TO CORROBORATE PETITIONER'S TRIAL TESTIMONY AND DEFENSE.

UNDER THESE CIRCUMSTANCES THE STATE SHOULD HAVE NO RIGHT TO PROHIBIT PETITIONER FROM HAVING DNA ANALYSIS PERFORMED, AND PETITIONER WAS DENIED DUE PROCESS BY THE ILLINOIS COURTS' ABUSE OF DISCRETION IN PROHIBITING SUCH DNA ANALYSIS.

The Illinois courts seem to be forgetting that we have an adversarial form of justice in our country.

The State is not the exclusive owner of physical items, received in evidence at a criminal trial. The bag of cannabis with the cigar inside, is an exhibit received in evidence at this trial. (R 182-89)

What right does the State have to prohibit petitioner from having DNA testing conducted? Indeed, what interest does the State have in suppressing the truth? If the State wanted to conduct DNA testing on that evidence, or any other evidence in

its crime labs, the State would most likely proceed to do so without seeking permission or approval from anyone.

We are not talking about admissibility, or relevance. We are talking about the testing of evidence only.

The Appellate Court's conclusion that there could be no "significance" to this evidence, is irrational. (App. C, pp. App. 18-19)

The police testimony, and petitioner's testimony, were diametrically opposed. Either the police were lying, or petitioner was lying.

A trial is a search for the truth. United States v. Leon, 468 U.S. 897, 82 L.Ed.2d 677, 684 (1984).

If petitioner's DNA is not on the partially-smoked cigar, that fact would tend to corroborate petitioner's testimony that the bag of cannabis was not removed from petitioner's person, and these Harvey Police Officers are lying.

If the DNA on the partially-smoked cigar is that of the driver, Sherone Watkins, that fact would tend to corroborate petitioner's testimony, that the bag of cannabis was found in Sherone Watkins' car, not on petitioner's person, and these Harvey Police Officers are lying.

Petitioner's right to have this evidence analyzed, is protected by due process. "The Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.' " Crane v. Kentucky, 476 U.S. 683, 690, 90 L.Ed.2d 636, 645 (1986). Every defendant charged with crime in the State courts has a federally protected constitutional right to present evidence in support of his defense. Chambers v. Mississippi, 410 U.S. 284, 35 L.Ed.2d 297 (1973); Washington v. Texas, 388 U.S. 14, 18 L.Ed.2d 1019 (1967). Indeed:

> "Few rights are more fundamental than that of an accused to present witnesses in his own defense." Chambers, supra, at 302, 35 L.Ed.2d at 312.

This cause should be remanded with directions that petitioner be permitted to have DNA analysis conducted upon the cigar found in the bag of cannabis.

With Illinois' track record concerning wrongful convictions,[1] it is shameful for the State to stymie petitioner here, in his efforts to establish his actual innocence.

The State should be agreeing to allow petitioner DNA analysis.

## CONCLUSION

For all of the above reasons, certiorari should be allowed.

Respectfully submitted.

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Dated: December 16, 2002

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1 The Appellate Court in its affirming Order (App. C, p. App. 9), relied on People v. Jimerson, 127 Ill.2d 12, 43-44 (1989) (affirming Jimerson's murder conviction and death sentence) -- which is noteworthy due to the fact that Mr. Jimerson was eventually exonerated and freed on the basis of DNA evidence.